Questions for the Record, for Chairman Sam Johnson from Nadine Vogel, Founder and President of Springboard Consulting, LLC

Responses dated November 16, 2012

For the House Ways and Means Subcommittee on Social Security hearing: "Securing the Future of the Disability Insurance Program," September 14, 2012

1) SHRM and its members recognize the need to strengthen the Social Security Disability Insurance (DI) program. Therefore, we appreciated Dr. Richard Burkhauser's proposal to reform the DI program based on reforms that have been enacted in the Netherlands. However, while the Dutch experience with disability benefits is worthy of consideration, there may not be great applicability to the vastly larger U.S. workforce. In addition, the overall Netherlands government approach to employee and social benefits is very different than the United States.

2) While experience rating is used to fund state workers' compensation benefits, employers have significant challenges navigating workers' compensation laws. In the human resource profession, the combination of the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and federal and state workers' compensation laws are commonly referred to as "the Bermuda Triangle of HR." Despite their significant merits, these laws are particularly complex, overlapping and frustrating for employers to administer, particularly for those employers that are administering a return-to-work (RTW) strategy and trying to facilitate work for an employee with an impairment. When I do worker assessments, I see great angst among employers regarding workers compensation laws, in part because of experience rating.

3) There is no question that varying state and federal laws present various pitfalls to employers that seek to help employees with disabilities. Ironically, it is often more difficult to bring an employee back from a long-term disability situation than to accommodate a new employee with the same disability as the employee on disability. This is because the complex interaction between the FMLA and the ADA with an employer's long-term disability (LTD) policy often makes it very complicated for the employer to navigate these rules and get the employee back to employment. Therefore, once an employee enters into an LTD situation, he or she is more likely to remain on SSDI. For these reasons, SHRM's number one policy

recommendation is for Congress to harmonize the myriad federal definitions of disability. Until this happens, other changes won't make a big difference. I hear from representatives at global organizations that ask, "why does the U.S. have so many definitions of disability?" The ADA, OFCCP, Social Security and education definitions of disability are needlessly varied. SHRM prefers the ADA's definition, as it relies on the essential functions of a job, rather than a more general job description. RTW and intersection between FMLA and ADA.

4) As you might imagine, Mr. Chairman, employer experiences with providing assistive technology and other accommodations is mixed. For example, I was recently speaking with an employee with low vision. The employee was being told by the employer to go to their manager to submit their accommodation request, in this case, for an assistive technology device. This organization has no centralized process for dealing with accommodation requests, which makes it difficult for people managers to know how to understand what the best and simplest solution may be to appropriately meet the needs of the employee. I always recommend that employers have a "one-stop," end-to-end process for employees to request accommodations and for managers to provide accommodations (including and accessible technology) in a fair and equitable manner. Employers should have an internal expert who can identify the appropriate solution, install such devices, train recipients on how to operate the devices, and provide maintenance and service. The end-to-end workplace accommodation process is otherwise known as a Reasonable Accommodations Committee.

5) Clarity and simplicity are always the cornerstones of what employers want from federal requirements or programs of any kind. Therefore, SHRM would support a pilot program that adopts a harmonized definition of disability based on the ADA definition. SHRM believes the ADA's disability definition is superior to other federal definitions because it focuses on what an employee can do, not what he or she cannot do. A second key element of a pilot program would be to allow an employer that has a Return to Work (RTW) program flexibility in navigating between the ADA and FMLA in returning an employee to work. For example, it's often easier to accommodate an individual's disabilities when they begin work, rather than when they are returning to work. The FMLA requires that when an employee returns to work, he or she must be restored to the same pay, some position and same job functions as prior to their break in service. Permitting employers to move around elements of the job duties, based on the employee's capabilities.